

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE SIDE****WRIT PETITION NO. 2503 OF 1998**

 Office Notes, Office
 Memoranda of Coram,
 appearances, Court's
 orders or directions
 and Registrar's orders.

Court's or Judge's orders

Mr. N.J. Patil for Petitioner.

Mrs S.S. Bhende, A.G.P. for Respondent
 Nos. 1 to 5.

CORAM : F.I. REBELLO &
 S.P. KUKDAY,JJ.
 DATED : FEBRUARY 02, 2005

P.C.

. The Petitioners were jointly holding 19
 Hect. 21 Gunthas as owners and 4 Hects.
 15 gunthas as tenants. In the proceedings
 initiated by the landlord their claim of
 tenancy in respect of 4 Hect. 15 gunthas
 was rejected and thus as owners they were
 holding 19 Hect. 21 Gunthas. The cut off
 date is 13.5.1977. The slab limit in the
 year 1977 was 8 acres but subsequently it
 has been reduced to 4 acres. The case of
 the Petitioner is that in the year 1975,

the suit was filed for petition being Regular Civil Suit No. 315 of 1975. That suit came to be decreed on 9.12.1975. Based on the decree, the mutation was effected in the survey records on 29.12.1975. The cut off date for holding was 13.5.1977. It is therefore, submitted that if the area is considered as of 1977 holding of the co-owners who were entitled to would be about 4 Hect. 25 Rs approximately. These objections were filed before the Land Acquisition Officer under Section 5A. That was not considered and declaration was issued under Section 6 of the land Acquisition. It is this declaration which is the subject matter of the present challenge. The Petition came to be admitted on 10.6.1998 and interim relief was granted in terms of Prayer Clause

(c)(i). That continues till date.

. In so far as Respondents are concerned, no reply has been filed. We therefore, proceed on the basis of the averments in the petition.

. If the partition is accepted as valid partition and considering the slab, the petitioner will be right in contending that

the declaration in respect of their land is liable to be set aside. However, on the facts and circumstances and considering the issues involved, we think it proper that the matter be remanded to Respondent No. 3, the Additional Commissioner, Pune Division, Pune for deciding the holdings of the Petitioners and thereafter to decide as to whether the petitioner's holdings in the benefited zone is liable to be acquired.

. In the light of the above, petition made absolute in terms of Prayer Clause (b) subject to the condition that the Petitioner herein will not make any objection if otherwise petitioner's land has to be acquired on the ground of declaration under Section 6 as also the award are being made beyond the time prescribed under the Land Acquisition Act. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)